

United States Government
MEMORANDUM

APR 16 1980

**Office of
Personnel Management**

Subject: Applicability of Interchange Provisions of Rule 6.7 to
Agencies Legally Excepted from Preference Laws.

Date:
In Reply Refer To:

From: Gail Goldberg
Attorney Advisor



Your Reference:

To: William Bohling, Chief
Inservice Placement Branch

This is in response to your memorandum of March 28, 1980, in which you seek the opinion of this office on whether OPM has the authority under section 6.7 of Civil Service Rule VI to enter into agreements for interchange of personnel with agencies such as the CIA, which are legally excepted from veterans preference laws.

For the reasons set out below, it is the opinion of this office that OPM has no such authority to enter into personnel interchange agreements with agencies which are legally excepted from veterans preference laws...

As you point out in your memorandum, section 6.7 of Civil Service Rule VI provides that interchange agreements must be "in the interest of good administration and consistent with the intent of the civil service laws and any other applicable laws." While the Veterans' Preference Act of 1944, the provisions of which are codified at various places in title 5, United States Code, is not, strictly speaking, a "civil service law" it has always been held to be an "applicable" law because its provisions are the basis for the whole competitive service recruiting and examining plan.

There appears to be nothing in the "legislative" history or the legal background of the Rule on this specific point. However, given the general statutory catch-all language in the Rule that any interchange agreement must be "consistent with other applicable laws" and the fact that OPM is charged with administration of the veterans' preference provisions,*/ it is logical to presume that Congress meant for OPM to honor only those systems consistent with the spirit and intent underlying the competitive civil service system (i.e., those systems according some kind of preference to veterans, although it needn't be identical to the preference given in the civil service).** This office believes that as a matter of legal interpretation, rather than as a policy determination, CSC previously had to deny

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CIA's request for an interchange agreement, and must do so again, as not being consistent with either the spirit or intent behind the enactment of Rule VI. We refer you to the historical material set out in our recent memorandum on the subject of personnel interchange agreements with administratively excepted agencies.

APPROVED:

Margery Waxman
MARGERY WAXMAN
General Counsel

* To the extent that CIA can demonstrate that it operated a system which accorded some kind of Veterans Preference similar to the Veterans Preference Act it may be possible to set up an interchange agreement.

*/ And Congress has long been aware of the [CSC], OPM position that, the Veterans Preference Act, although not a "civil service law", was definitely a closely-related and applicable law.

Subchapter 2. Cooperation With Other Merit Systems

[NOTE: Subchapter 1 is reserved.]

2-1. INTERCHANGE OF ELIGIBLES

→ON REGISTERS←

The Commission is authorized by Executive Order 9830 to certify eligibles from appropriate registers maintained by Federal or territorial examining offices, or civil service examining offices of State and local agencies. The certification may be made only with the agreement of the office involved and a finding by the Commission that the requirements of law concerning appointments to the competitive service have been met. These offices, upon agreement with the Commission, may certify eligibles from appropriate registers maintained by the Commission.

2-2. MOVEMENTS OF PERSONS BETWEEN THE COMPETITIVE CIVIL SERVICE AND OTHER MERIT SYSTEMS

a. Authority and requirements. The Commission and any Federal agency having an independent merit system →(i.e. an "excepted agency")← may, pursuant to Executive Order 10577, civil service rule 6.7, enter into an agreement providing for the movement of persons between the competitive civil service and the independent system. Under the terms of an agreement, normally an excepted employee of the agency with the independent merit system may noncompetitively transfer to a competitive position in another Federal agency. Agreements may be established when the Commission and the agency with the independent merit system involved determines that← movement between the two systems is in the interest of good administration and is consistent with the intent of civil service and other applicable laws. An agreement prescribes the conditions for interchange of persons and defines the status and tenure acquired by persons when they move from one system to the other. A proposal to establish an agreement should be submitted to the →Director, Bureau of Recruiting and Examining,← Civil

Service Commission, Washington, D.C. 20415, for approval by the Commission.

b. Criteria for approval of an agreement.

(1) The Commission's criteria when it considers a proposal to authorize the interchange of employees between the competitive civil service and another Federal merit system are:

(a) →The basic framework of the merit personnel system must be established through law, rules, regulations, or instructions in written form and← must be designed to achieve, and in practice tend to achieve, the following general objectives:

- (i) →Recruiting, selecting, and advancing employees solely on the basis of their relative abilities, knowledges, and skills including open and outside competition for positions with selection based on merit;
- (ii) Providing equitable and adequate compensation to attract and retain high-quality personnel, with appropriate incentives and recognition for excellence in performance;
- (iii) Maintaining a formal position classification or job evaluation system that serves as the foundation for objectively and consistently determining the qualifications requirements of job.
- (iv) Retaining employees on the basis of adequacy of their performance, correcting inadequate performance, and separating employees whose inadequate performance cannot be corrected;
- (v) Assuring fair treatment of applicants and employees in all aspects of personnel administration without regard to political affiliation, race, color, national origin, age, sex, religious creed, physical handicap, or other nonmerit factors and

- with proper regard for their privacy and constitutional rights;
- (vi) Assuring that employees are protected against arbitrary action, personal favoritism, and coercions for partisan purposes, and providing for fair and impartial review and correction of improper actions;
 - (vii) Compliance with part 713 of the CSC implementing regulations concerning equal employment opportunities, including the requirement to operate under an annually approved EEO affirmative action plan, (for Federal agencies as defined in section 717(a) of P.L. 92-261);
 - (viii) Conducting positive employee-management relations and communications.←
- (b) The basic framework of the system must be established through law, rules, regulations, or instructions in written form.
 - (c) Actual operations under the system must accord with the framework established.
 - (d) In filling positions under the →independent merit← system the following →concepts← of open competition →and merit selection← must be applied:
 - (i) Sufficient publicity must be given so that a reasonable amount of information is made available to citizens about the existence of vacancies, →e.g., job announcements posted in appropriate CSC job information centers.←
 - (ii) Interested persons who have learned of the vacancy must have a reasonable opportunity →to apply for the vacancy and← to make known their availability for consideration and →selection.←
 - (iii) Standards of competence and fitness must be applied impartially to all persons who make themselves available. →These standards should be based on a job analysis to identify basic duties and responsibilities, skills, knowledges, and abilities required to perform the duties and responsibilities, and factors that are important in evaluating candidates.←
 - (iv) The standards must contain no test which constitutes discrimination based on factors other than competence and fitness. This includes the absence of any political test or political clearance of applicants.
 - (v) Selection must be from among those →applicants← determined on the basis of the →aforementioned← standards to be most competent.
 - (vi) Each applicant should be able to learn what consideration was given to his application.
 - (vii) Each applicant should have an opportunity to request and receive an administrative review of the consideration given to his application.
 - (e) Procedures must be followed under which persons entitled to veteran preference are accorded the preference required →by law in the selection process and under which preference eligible applicants have an opportunity to ascertain in what manner← their preference was applied.
 - (f) A system for the discontinuance of the interchange agreement at the request of one or both parties must be established.
 - (g) Prior to entering into any agreement the Commission may conduct an onsite review of the excepted agency's personnel management system. Additionally, procedures will be established to allow for periodic personnel management evaluations conducted by CSC personnel or agency personnel with CSC representatives on the evaluation team.←
 - (2) Other conditions affecting approval, including mutual agreement that interchange would be in the interest of good administration, the kinds of status and tenure accorded, and other specific conditions →may be← developed as part of an individual agreement. This phase may be undertaken once it is determined that the basic criteria →outlined above have been← met and that both the agency and the Commission believe that an interchange agreement is practical and desirable.